

UNITED STATES DISTRICT COURT  
DISTRICT OF DELAWARE

IN RE GOOGLE INC. COOKIE  
PLACEMENT CONSUMER PRIVACY  
LITIGATION

C.A. 12-MD-2358 (SLR)

**Demand For Jury Trial**

This Document Relates to:  
**All Actions**

**DEFENDANT GOOGLE INC.'S**  
**ANSWER TO THE CONSOLIDATED AMENDED COMPLAINT**

Defendant Google Inc. (“Google”) hereby answers the allegations of Plaintiffs’ Consolidated Class Complaint filed on December 19, 2012 (the “Complaint”). To the extent the paragraphs of the Complaint are grouped under headings and subheadings, Google responds generally that such headings and subheadings (which are repeated below for ease of organization) state legal conclusions and inferences as to which no response is required. Except as explicitly admitted herein, each and every allegation of the Complaint is denied. Although many of the Complaint’s allegations are written in the present tense, Google admits or denies those allegations only to the extent they were true or false at some point in time during the alleged relevant time period (August 2011 to February 2012). Accordingly, an admission or denial of an allegation written in the present tense shall not be construed as an admission or denial that the allegation remains true or false at the time of filing of this Answer.

**ANSWER**

1. Google admits that this putative class action lawsuit seeks damages and injunctive relief. The remaining allegations of Paragraph 1 are denied.
2. Google denies the allegations of Paragraph 2.
3. Google denies the allegations of Paragraph 3.
4. Google denies the allegations of Paragraph 4.

### **JURISDICTION AND VENUE**

5. Google admits that this Court has general personal jurisdiction over Google because it is incorporated under the laws of Delaware. To the extent this paragraph includes allegations regarding defendants that are no longer a part of this case, Google denies them. Google denies the remaining allegations of Paragraph 5.

6. Google admits that this Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1332(d) under the Class Action Fairness Act, because the alleged amount in controversy exceeds \$5,000,000, exclusive of interest and costs, and Plaintiffs allege that a member of the alleged putative class is a citizen of a State different from any defendant. Google denies the remaining allegations of Paragraph 6.

7. Google denies the allegations of Paragraph 7.

8. Google admits the allegations of Paragraph 8.

9. Google admits the allegations of Paragraph 9.

### **THE PARTIES**

10. Google is without sufficient knowledge or information to form a belief as to the truth of the allegations of Paragraph 10, and on that basis denies them.

11. Google is without sufficient knowledge or information to form a belief as to the truth of the allegations of Paragraph 11, and on that basis denies them.

12. Google is without sufficient knowledge or information to form a belief as to the truth of the allegations of Paragraph 12, and on that basis denies them.

13. Google is without sufficient knowledge or information to form a belief as to the truth of the allegations of Paragraph 13, and on that basis denies them.

14. Google admits the allegations of Paragraph 14.

15. Paragraph 15 includes allegations regarding a defendant that is no longer a part of this case, and Google is without sufficient knowledge or information to form a belief as to the truth of the allegations, and Google therefore denies them.

16. Paragraph 16 includes allegations regarding a defendant that is no longer a part of this case, and Google is without sufficient knowledge or information to form a belief as to the truth of the allegations, and Google therefore denies them.

17. Paragraph 17 includes allegations regarding a defendant that is no longer a part of this case, and Google is without sufficient knowledge or information to form a belief as to the truth of the allegations, and Google therefore denies them.

18. Paragraph 18 includes allegations regarding a defendant that is no longer a part of this case, and Google is without sufficient knowledge or information to form a belief as to the truth of the allegations, and Google therefore denies them.

### **FACTUAL ALLEGATIONS**

#### **THE DEFENDANTS**

19. Google admits that Paragraph 19 quotes or paraphrases the identified sources. Google otherwise denies the express and implied allegations of Paragraph 19.

20. Paragraph 20 includes allegations regarding a defendant that is no longer a part of this case, and Google is without sufficient knowledge or information to form a belief as to the truth of the allegations, and Google therefore denies them.

21. Paragraph 21 includes allegations regarding a defendant that is no longer a part of this case, and Google is without sufficient knowledge or information to form a belief as to the truth of the allegations, and Google therefore denies them.

22. Paragraph 22 includes allegations regarding a defendant that is no longer a part of this case, and Google is without sufficient knowledge or information to form a belief as to the truth of the allegations, and Google therefore denies them.

23. Paragraph 23 includes allegations regarding a defendant that is no longer a part of this case, and Google is without sufficient knowledge or information to form a belief as to the truth of the allegations, and Google therefore denies them.

24. Paragraph 24 includes allegations regarding a defendant that is no longer a part of this case, and Google is without sufficient knowledge or information to form a belief as to the truth of the allegations, and Google therefore denies them.

25. Paragraph 25 includes allegations regarding a defendant that is no longer a part of this case, and Google is without sufficient knowledge or information to form a belief as to the truth of the allegations, and Google therefore denies them.

26. Paragraph 26 includes allegations regarding a defendant that is no longer a part of this case, and Google is without sufficient knowledge or information to form a belief as to the truth of the allegations, and Google therefore denies them.

#### **HOW TARGETED INTERNET ADVERTISING WORKS**

27. Google denies the allegations of Paragraph 27.

28. Google admits the allegations of Paragraph 28.

29. Google denies the allegations of Paragraph 29.

30. Google denies the allegations of Paragraph 30.

31. Google admits the allegations of Paragraph 31.

32. Google admits the allegations of Paragraph 32.

33. Google admits that some Internet communications can occur as described in Paragraph 33 but otherwise denies the allegations of this paragraph.

34. Google admits that some Internet communications can occur as described in Paragraph 34 but otherwise denies the allegations of this paragraph.

35. Google admits that some Internet communications can occur as described in Paragraph 35 but otherwise denies the allegations of this paragraph.

36. Google admits that some Internet communications can occur as described in Paragraph 36 but otherwise denies the allegations of this paragraph.

37. Google denies the allegations of Paragraph 37.

38. Google denies the allegations of Paragraph 38.

39. Google admits that some cookies in some instances can be categorized as in Paragraph 39, and that the proffered definitions of the categories and classifications are generally accurate. Google denies that the proffered definitions are accurate for all circumstances; for example, Google denies that “first-party cookies” can only be set “by the website the user is visiting at the time the cookie is set on the device” and denies that all cookies set by a website other than the site the user is visiting are “third-party cookies.” Google further denies the remaining allegations, including the alleged examples of these cookies and the allegation that “third-party cookies are not typically helpful to either the user or the given server and/or website.”

40. Google denies the allegations of Paragraph 40.

41. Google admits that some Internet communications can occur as described in Paragraph 41 but otherwise denies the allegations of this paragraph.

42. Google admits that some Internet communications can occur as described in Paragraph 42 but otherwise denies the allegations of this paragraph.

43. Google admits that one of the services it provides is the ability for advertisers to deliver more relevant and engaging advertisements that improve ad effectiveness. To the extent this paragraph includes allegations regarding defendants that are no longer a part of this case, such allegations are no longer at issue and Google is without sufficient knowledge or information to form a belief as to the truth of the allegations and therefore denies them. Google denies the remaining allegations of Paragraph 43.

44. Google denies the allegations of Paragraph 44.

45. Google admits that, under certain circumstances, it placed third-party cookies on browsers that visited websites that partnered with Google to serve ads, used those cookies to recognize subsequent GET requests from the same browser visiting the same or another site that partnered with Google to serve ads, and thereby, in some instances, anonymously organized certain information to facilitate the service of ads that were more relevant than they otherwise would be. Google otherwise denies the allegations of Paragraph 45.

46. Google admits that, under certain circumstances, it placed third-party cookies on browsers that visited websites that partnered with Google to serve ads, used those cookies to recognize subsequent GET requests from the same browser visiting the same or another site that partnered with Google to serve ads, and thereby, in some instances, anonymously organized certain information to facilitate the service of ads that were more relevant than they otherwise would be. Google otherwise denies the allegations of Paragraph 46.

47. Google admits that websites can be located on the Internet using the website URL and that one such URL is <http://www.ca3.uscourts.gov/>. Google denies the remaining allegations of Paragraph 47.

48. Google denies the allegations of Paragraph 48.

49. Google admits that Paragraph 49 quotes language from the identified source. Google denies the remaining allegations of Paragraph 49.

50. Google admits that Paragraph 50 quotes language from the identified source. Google denies the remaining allegations of Paragraph 50.

51. Google admits that Paragraph 51 quotes language from the identified source. Google denies the remaining allegations of Paragraph 51.

52. Google denies the allegations of Paragraph 52.

53. Google is without sufficient knowledge or information to form a belief as to the truth of the allegations of Paragraph 53, and on that basis denies them.

54. Google admits that Paragraph 54 substantially quotes language from the identified source. Google is without sufficient knowledge or information to form a belief as to the truth of the remaining allegations of Paragraph 54, and on that basis denies them.

55. Google admits that some of its advertising clients pay on a cost-per-click basis and that Google also offers cost-for-impression ads, which charge an advertising client according to the number of ads served. Google is without sufficient knowledge or information to form a belief as to the truth of the remaining allegations of Paragraph 55, and on that basis denies them.

56. Google admits that Paragraph 56 repeats claims made by the identified source. Google is without sufficient knowledge or information to form a belief as to the truth of the remaining allegations of Paragraph 56, and on that basis denies them.

57. Google admits that Paragraph 57 substantially quotes language from the identified source regarding Google's "Screenwise Trends" program. Google denies the remaining allegations of Paragraph 57.

58. Google admits that Paragraph 58 describes some elements of the Screenwise program. Google denies that Paragraph 58 describes all of the elements of the Screenwise program or that the Screenwise program is accurately portrayed by the allegations of Paragraph 58. Google denies the remaining allegations of Paragraph 58.

59. Google admits that Paragraph 59 describes some elements of the Screenwise program. Google denies that Paragraph 59 describes all of the elements of the Screenwise program or that the Screenwise program is accurately portrayed by the allegations of Paragraph 59. Google denies the remaining allegations of Paragraph 59.

60. Google denies the allegations of Paragraph 60.

61. Google admits that Paragraph 61 quotes language from the identified source. Google denies the remaining allegations of Paragraph 61.

62. Google admits that Paragraph 62 quotes language from the identified source. Google denies the remaining allegations of Paragraph 62.

63. Google is without sufficient knowledge or information to form a belief as to the truth of the allegations of Paragraph 63, and on that basis denies them.

64. Google admits that Paragraph 64 contains information reported in the identified source. Google denies the remaining allegations of Paragraph 64.

65. Google admits that Paragraph 65 contains information reported in the identified source. Google denies the remaining allegations of Paragraph 65.

66. Google admits that Paragraph 66 quotes language and contains information found in the identified source. Google is without sufficient knowledge or information to form a belief as to the truth of the remaining allegations of Paragraph 66, and on that basis denies them.

67. Google denies the allegations of Paragraph 67.

**Allegations as to Safari Browser Users**

68. Google admits the allegations of Paragraph 68.

69. Google admits that Paragraph 69 substantially quotes language and contains information found in the identified source. Google denies that “Safari accepts cookies only from websites you visit.” Google is without sufficient knowledge or information to form a belief as to the truth of the remaining allegations of Paragraph 69, and on that basis denies them.

70. Google admits that Paragraph 70 quotes language found in the identified source. Google denies that “Safari blocks third-party cookies by default.” Google is without sufficient knowledge or information to form a belief as to the truth of the remaining allegations of Paragraph 70, and on that basis denies them.

71. Google admits that Paragraph 71 quotes language found in some versions of the Safari browser. Google is without sufficient knowledge or information to form a belief as to the truth of the remaining allegations of Paragraph 71, and on that basis denies them.

72. Google admits that some devices listed in Paragraph 72 ship with the Safari browser installed with its default settings. Google is without sufficient knowledge or information to form a belief as to the truth of the remaining allegations of Paragraph 72, and on that basis denies them.

73. Google denies the allegations of Paragraph 73.

74. Google admits that Paragraph 74 quotes some language from the identified source. Google denies the remaining allegations of Paragraph 74.

75. Google admits that the identified source in Paragraph 75 purported to base its claims on the work of Jonathan Mayer. Google denies the remaining allegations of Paragraph 75.



76. Google admits that Safari's default functionality allows third-party cookies to be placed under multiple circumstances, including when the POST command is used. Google denies the remaining allegations of Paragraph 76.

77. Google denies the allegations of Paragraph 77.

78. Google admits that the illustrations in Paragraph 78 are taken from the identified source. Google denies the remaining allegations of Paragraph 78.

**Google**

79. Google admits that the quoted language appeared on a web page in Google's Help Center, and that the quoted language was removed in February 2012. Google denies the remaining allegations of Paragraph 79.

80. Google admits the allegations of Paragraph 80.

81. Google admits that the referenced language, for reasons completely unrelated to the allegations of the Complaint, no longer appeared in the Privacy Policy dated March 1, 2012. Google denies the remaining allegations of Paragraph 81.

82. Google admits that it has made the statements quoted in Paragraph 82. Google denies the remaining allegations of Paragraph 82.

83. Google denies the allegations of Paragraph 83.

84. Google admits that it contracted with websites for Google to provide display advertisements on webpages, that the owners of websites are sometimes called "publishers," and that Google sometimes used iframes to display ads. Google denies the remaining allegations of Paragraph 84.

85. Google admits that when a user types a webpage address into the user's Safari navigation bar, the user's Safari browser starts by sending a GET request to the server which hosts the webpage and that this GET request instructs the server to send all information for the webpage back to the user's browser for display on the monitor of the user's computing device. Google denies the remaining allegations of Paragraph 85.

86. Google admits the allegations of Paragraph 86.

87. Google denies the allegations of Paragraph 87.

88. Google admits that the alleged communications may be different if a browser is logged into a Google account. Google otherwise denies the allegations of Paragraph 88.

89. Google denies the allegations of Paragraph 89.

90. Google denies the allegations of Paragraph 90.

91. Google denies the allegations of Paragraph 91.

92. Google admits that, under some circumstances, it used the POST command to place the “\_drt\_” cookie on Safari browsers. Google denies the remaining allegations of Paragraph 92.

93. Google denies the allegations of Paragraph 93.

94. Google admits that Safari had a built-in exception that allows all cookies from a third-party domain to be set once any cookie from that domain has been set. Google denies the remaining allegations of Paragraph 94.

95. Google admits that in some circumstances, the DoubleClick ID cookie could be set on a Safari browser if that browser already had the “\_drt\_” cookie, and that in some circumstances, the DoubleClick ID Cookie had a unique value. Google denies the remaining allegations of Paragraph 95.

96. Google admits that Paragraph 96 quotes language from Google’s website. Google denies that the word “identifies” in this context means an association of personally identifiable information with browsing information, or anything other than the association of an anonymous string of alphanumeric characters (the cookie value) with anonymous browsing history being sent by a browser with each “GET” request. Google denies the remaining allegations of Paragraph 96.

97. Google admits that Paragraph 97 quotes language from Google’s website. Google denies the remaining allegations of Paragraph 97.

98. Google admits that Paragraph 98 quotes language from Google’s website. Google denies the remaining allegations of Paragraph 98.

99. Google admits that it uses “1x1 pixels” as part of its DoubleClick services. Google denies the remaining allegations of Paragraph 99.

100. Google denies the allegations of Paragraph 100.

101. Google admits that it added a “+1” button to select Google ads so that Google+ users could click that button to show they liked those ads. Google denies the remaining allegations of Paragraph 101.

102. Google admits that Google+ and Google Ads were on separate “domains.” Google denies the remaining allegations of Paragraph 102.

103. Google admits that Paragraph 103 quotes language from the identified source. Google denies the remaining allegations of Paragraph 103.

104. Google denies the allegations of Paragraph 104.

105. Google admits that Paragraph 105 quotes language from the identified source. Google denies the remaining allegations of Paragraph 105.

106. Google denies the allegations of Paragraph 106.

107. Google denies the allegations of Paragraph 107.

108. Google denies the allegations of Paragraph 108.

109. Google denies the allegations of Paragraph 109.

110. Google denies the allegations of Paragraph 110.

111. Google denies the allegations of Paragraph 111.

112. Google admits that Paragraph 112 quotes language from the identified source. Google denies the remaining allegations of Paragraph 112.

113. Google admits that Paragraph 113 quotes language from the identified source. Google denies the remaining allegations of Paragraph 113.

114. Google denies the allegations of Paragraph 114.

115. Google denies the allegations of Paragraph 115.

116. Google denies the allegations of Paragraph 116.

117. Google admits that it relies on advertising revenue and that Paragraph 117 contains information taken from the identified sources. Google denies the remaining allegations of Paragraph 117.

118. Google admits that Paragraph 118 substantially quotes language from the identified source. Google denies the remaining allegations of Paragraph 118.

119. Google admits that Paragraph 119 quotes language from the identified source. Google denies the remaining allegations of Paragraph 119.

120. Google admits that Paragraph 120 substantially quotes language from the identified source. Google denies the remaining allegations of Paragraph 120.

121. Google denies the allegations of Paragraph 121.

122. Google admits that Paragraph 122 quotes language from the identified source. Google denies the remaining allegations of Paragraph 122.

123. Google admits that Paragraph 123 quotes language from the identified source. Google denies the remaining allegations of Paragraph 123.

124. Google admits that Paragraph 124 quotes language from the identified source. Google denies the remaining allegations of Paragraph 124.

125. Google denies the allegations of Paragraph 125.

126. Google admits that Paragraph 126 quotes language from the identified source. Google denies the remaining allegations of Paragraph 126.

**PointRoll**

127. Paragraph 127 includes allegations regarding a defendant that is no longer a part of this case, and Google is without sufficient knowledge or information to form a belief as to the truth of the allegations, and Google therefore denies them.

128. Paragraph 128 includes allegations regarding a defendant that is no longer a part of this case, and Google is without sufficient knowledge or information to form a belief as to the truth of the allegations, and Google therefore denies them.

129. Paragraph 129 includes allegations regarding a defendant that is no longer a part of this case, and Google is without sufficient knowledge or information to form a belief as to the truth of the allegations, and Google therefore denies them.

130. Paragraph 130 includes allegations regarding a defendant that is no longer a part of this case, and Google is without sufficient knowledge or information to form a belief as to the truth of the allegations, and Google therefore denies them.

131. Paragraph 131 includes allegations regarding a defendant that is no longer a part of this case, and Google is without sufficient knowledge or information to form a belief as to the truth of the allegations, and Google therefore denies them.

132. Paragraph 132 includes allegations regarding a defendant that is no longer a part of this case, and Google is without sufficient knowledge or information to form a belief as to the truth of the allegations, and Google therefore denies them.

133. Paragraph 133 includes allegations regarding a defendant that is no longer a part of this case, and Google is without sufficient knowledge or information to form a belief as to the truth of the allegations, and Google therefore denies them.

134. Paragraph 134 includes allegations regarding a defendant that is no longer a part of this case, and Google is without sufficient knowledge or information to form a belief as to the truth of the allegations, and Google therefore denies them.

135. Paragraph 135 includes allegations regarding a defendant that is no longer a part of this case, and Google is without sufficient knowledge or information to form a belief as to the truth of the allegations, and Google therefore denies them.

136. Paragraph 136 includes allegations regarding a defendant that is no longer a part of this case, and Google is without sufficient knowledge or information to form a belief as to the truth of the allegations, and Google therefore denies them.

137. Paragraph 137 includes allegations regarding a defendant that is no longer a part of this case, and Google is without sufficient knowledge or information to form a belief as to the truth of the allegations, and Google therefore denies them.

138. Paragraph 138 includes allegations regarding a defendant that is no longer a part of this case, and Google is without sufficient knowledge or information to form a belief as to the truth of the allegations, and Google therefore denies them.

139. Paragraph 139 includes allegations regarding a defendant that is no longer a part of this case, and Google is without sufficient knowledge or information to form a belief as to the truth of the allegations, and Google therefore denies them.

140. Paragraph 140 includes allegations regarding a defendant that is no longer a part of this case, and Google is without sufficient knowledge or information to form a belief as to the truth of the allegations, and Google therefore denies them.

141. Paragraph 141 includes allegations regarding a defendant that is no longer a part of this case, and Google is without sufficient knowledge or information to form a belief as to the truth of the allegations, and Google therefore denies them.

142. Paragraph 142 includes allegations regarding a defendant that is no longer a part of this case, and Google is without sufficient knowledge or information to form a belief as to the truth of the allegations, and Google therefore denies them.

143. Paragraph 143 includes allegations regarding a defendant that is no longer a part of this case, and Google is without sufficient knowledge or information to form a belief as to the truth of the allegations, and Google therefore denies them.

144. Paragraph 144 includes allegations regarding a defendant that is no longer a part of this case, and Google is without sufficient knowledge or information to form a belief as to the truth of the allegations, and Google therefore denies them.

145. Paragraph 145 includes allegations regarding a defendant that is no longer a part of this case, and Google is without sufficient knowledge or information to form a belief as to the truth of the allegations, and Google therefore denies them.

**Vibrant**

146. Paragraph 146 includes allegations regarding a defendant that is no longer a part of this case, and Google is without sufficient knowledge or information to form a belief as to the truth of the allegations, and Google therefore denies them.

147. Paragraph 147 includes allegations regarding a defendant that is no longer a part of this case, and Google is without sufficient knowledge or information to form a belief as to the truth of the allegations, and Google therefore denies them.

148. Paragraph 148 includes allegations regarding a defendant that is no longer a part of this case, and Google is without sufficient knowledge or information to form a belief as to the truth of the allegations, and Google therefore denies them.

149. Paragraph 149 includes allegations regarding a defendant that is no longer a part of this case, and Google is without sufficient knowledge or information to form a belief as to the truth of the allegations, and Google therefore denies them.

150. Paragraph 150 includes allegations regarding a defendant that is no longer a part of this case, and Google is without sufficient knowledge or information to form a belief as to the truth of the allegations, and Google therefore denies them.

151. Paragraph 151 includes allegations regarding a defendant that is no longer a part of this case, and Google is without sufficient knowledge or information to form a belief as to the truth of the allegations, and Google therefore denies them.

152. Paragraph 152 includes allegations regarding a defendant that is no longer a part of this case, and Google is without sufficient knowledge or information to form a belief as to the truth of the allegations, and Google therefore denies them.

**Media**

153. Paragraph 153 includes allegations regarding a defendant that is no longer a part of this case, and Google is without sufficient knowledge or information to form a belief as to the truth of the allegations, and Google therefore denies them.

154. Paragraph 154 includes allegations regarding a defendant that is no longer a part of this case, and Google is without sufficient knowledge or information to form a belief as to the truth of the allegations, and Google therefore denies them.

155. Paragraph 155 includes allegations regarding a defendant that is no longer a part of this case, and Google is without sufficient knowledge or information to form a belief as to the truth of the allegations, and Google therefore denies them.

156. Paragraph 156 includes allegations regarding a defendant that is no longer a part of this case, and Google is without sufficient knowledge or information to form a belief as to the truth of the allegations, and Google therefore denies them.

157. Paragraph 157 includes allegations regarding a defendant that is no longer a part of this case, and Google is without sufficient knowledge or information to form a belief as to the truth of the allegations, and Google therefore denies them.

158. Paragraph 158 includes allegations regarding a defendant that is no longer a part of this case, and Google is without sufficient knowledge or information to form a belief as to the truth of the allegations, and Google therefore denies them.

159. Paragraph 159 includes allegations regarding a defendant that is no longer a part of this case, and Google is without sufficient knowledge or information to form a belief as to the truth of the allegations, and Google therefore denies them.

160. Paragraph 160 includes allegations regarding a defendant that is no longer a part of this case, and Google is without sufficient knowledge or information to form a belief as to the truth of the allegations, and Google therefore denies them.

161. Paragraph 161 includes allegations regarding a defendant that is no longer a part of this case, and Google is without sufficient knowledge or information to form a belief as to the truth of the allegations, and Google therefore denies them.

162. Paragraph 162 includes allegations regarding a defendant that is no longer a part of this case, and Google is without sufficient knowledge or information to form a belief as to the truth of the allegations, and Google therefore denies them.



### **The FTC Investigation of Google**

163. Google denies the allegations of Paragraph 163.

164. Google admits that it signed a consent order with the FTC in 2011 relating to another matter and that Paragraph 164 paraphrases allegations found in the referenced FTC complaint. Google denies the remaining allegations for Paragraph 164.

165. Google admits that some of the terms identified in Paragraph 165 were included in the FTC consent order. Google denies the remaining allegations for Paragraph 165.

166. Google admits that Paragraph 166 includes allegations made by the FTC in a complaint filed on August 8, 2012. Google denies the remaining allegations of Paragraph 166.

167. Google admits that Paragraph 167 contains statements from an FTC press release that paraphrases allegations made by the FTC in a complaint filed on August 8, 2012. Google denies the remaining allegations of Paragraph 167.

168. Google admits that its settlement with the FTC included a fine of \$22.5 million. Google denies the remaining allegations of Paragraph 168.

169. Google admits that Commissioner Rosch filed a dissent and that Paragraph 169 quotes language from the identified source. Google denies the remaining allegations of Paragraph 169.

170. Google denies that its settlement with the FTC is the largest fine ever levied for violation of an FTC order. Google lacks sufficient knowledge and information to admit or deny whether Consumer Watchdog is “a public interest organization dedicated to investigating, advocating, mobilizing, and litigating on behalf of American consumers.” Google admits the remaining allegations of Paragraph 170.

### **Allegations as to Microsoft Internet Explorer Users**

171. The allegations in Paragraph 171 are no longer at issue in this case, and on that basis Google denies them.

172. The allegations in Paragraph 172 are no longer at issue in this case, and on that basis Google denies them.

173. The allegations in Paragraph 173 are no longer at issue in this case, and on that basis Google denies them.

174. The allegations in Paragraph 174 are no longer at issue in this case, and on that basis Google denies them.

175. The allegations in Paragraph 175 are no longer at issue in this case, and on that basis Google denies them.

176. The allegations in Paragraph 176 are no longer at issue in this case, and on that basis Google denies them.

177. The allegations in Paragraph 177 are no longer at issue in this case, and on that basis Google denies them.

178. The allegations in Paragraph 178 are no longer at issue in this case, and on that basis Google denies them.

179. The allegations in Paragraph 179 are no longer at issue in this case, and on that basis Google denies them.

180. The allegations in Paragraph 180 are no longer at issue in this case, and on that basis Google denies them.

181. The allegations in Paragraph 181 are no longer at issue in this case, and on that basis Google denies them.

182. The allegations in Paragraph 182 are no longer at issue in this case, and on that basis Google denies them.

183. The allegations in Paragraph 183 are no longer at issue in this case, and on that basis Google denies them.

184. The allegations in Paragraph 184 are no longer at issue in this case, and on that basis Google denies them.

185. The allegations in Paragraph 185 are no longer at issue in this case, and on that basis Google denies them.

186. The allegations in Paragraph 186 are no longer at issue in this case, and on that basis Google denies them.

187. The allegations in Paragraph 187 are no longer at issue in this case, and on that basis Google denies them.

188. The allegations in Paragraph 188 are no longer at issue in this case, and on that basis Google denies them.

189. The allegations in Paragraph 189 are no longer at issue in this case, and on that basis Google denies them.

190. The allegations in Paragraph 190 are no longer at issue in this case, and on that basis Google denies them.

### **CLASS ACTION ALLEGATIONS**

191. Google is without sufficient knowledge or information to form a belief as to the truth of the allegations of Paragraph 191, and on that basis denies them.

192. Google is without sufficient knowledge or information to form a belief as to the truth of the allegations of Paragraph 192, and on that basis denies them.

193. Google denies the allegations of Paragraph 193.

194. Google denies the allegations of Paragraph 194.

195. Google denies the allegations of Paragraph 195.

196. Google is without sufficient knowledge or information to form a belief as to the truth of the allegations of Paragraph 196, and on that basis denies them.

197. Google denies the allegations of Paragraph 197.

### **COUNT I**

#### **VIOLATION OF THE ELECTRONIC COMMUNICATIONS PRIVACY ACT (ECPA), 18 U.S.C. § 2510, *et seq.* AGAINST ALL DEFENDANTS**

198. Paragraph 198 includes allegations regarding a claim that is no longer a part of this case, and Google denies them on that basis.

199. Paragraph 199 includes allegations regarding a claim that is no longer a part of this case, and Google denies them on that basis.

200. Paragraph 200 includes allegations regarding a claim that is no longer a part of this case, and Google denies them on that basis.

201. Paragraph 201 includes allegations regarding a claim that is no longer a part of this case, and Google denies them on that basis.

202. Paragraph 202 includes allegations regarding a claim that is no longer a part of this case, and Google denies them on that basis.

203. Paragraph 203 includes allegations regarding a claim that is no longer a part of this case, and Google denies them on that basis.

204. Paragraph 204 includes allegations regarding a claim that is no longer a part of this case, and Google denies them on that basis.

205. Paragraph 205 includes allegations regarding a claim that is no longer a part of this case, and Google denies them on that basis.

206. Paragraph 206 includes allegations regarding a claim that is no longer a part of this case, and Google denies them on that basis.

207. Paragraph 207 includes allegations regarding a claim that is no longer a part of this case, and Google denies them on that basis.

208. Paragraph 208 includes allegations regarding a claim that is no longer a part of this case, and Google denies them on that basis.

209. Paragraph 209 includes allegations regarding a claim that is no longer a part of this case, and Google denies them on that basis.

210. Paragraph 210 includes allegations regarding a claim that is no longer a part of this case, and Google denies them on that basis.

211. Paragraph 211 includes allegations regarding a claim that is no longer a part of this case, and Google denies them on that basis.

212. Paragraph 212 includes allegations regarding a claim that is no longer a part of this case, and Google denies them on that basis.

**COUNT II**

**VIOLATION OF THE STORED  
COMMUNICATIONS ACT, 18 U.S.C. § 2701, *et seq.* (“SCA”) AGAINST ALL  
DEFENDANTS**

213. Paragraph 213 includes allegations regarding a claim that is no longer a part of this case, and Google denies them on that basis.

214. Paragraph 214 includes allegations regarding a claim that is no longer a part of this case, and Google denies them on that basis.

215. Paragraph 215 includes allegations regarding a claim that is no longer a part of this case, and Google denies them on that basis.

216. Paragraph 216 includes allegations regarding a claim that is no longer a part of this case, and Google denies them on that basis.

217. Paragraph 217 includes allegations regarding a claim that is no longer a part of this case, and Google denies them on that basis.

218. Paragraph 218 includes allegations regarding a claim that is no longer a part of this case, and Google denies them on that basis.

219. Paragraph 219 includes allegations regarding a claim that is no longer a part of this case, and Google denies them on that basis.

**COUNT III**

**VIOLATION OF THE COMPUTER FRAUD AND ABUSE ACT,  
18 U.S.C. § 1030, *et seq.* (“CAFA”) AGAINST ALL DEFENDANTS**

220. Paragraph 220 includes allegations regarding a claim that is no longer a part of this case, and Google denies them on that basis.

221. Paragraph 221 includes allegations regarding a claim that is no longer a part of this case, and Google denies them on that basis.

222. Paragraph 222 includes allegations regarding a claim that is no longer a part of this case, and Google denies them on that basis.

223. Paragraph 223 includes allegations regarding a claim that is no longer a part of this case, and Google denies them on that basis.

224. Paragraph 224 includes allegations regarding a claim that is no longer a part of this case, and Google denies them on that basis.

225. Paragraph 225 includes allegations regarding a claim that is no longer a part of this case, and Google denies them on that basis.

226. Paragraph 226 includes allegations regarding a claim that is no longer a part of this case, and Google denies them on that basis.

227. Paragraph 227 includes allegations regarding a claim that is no longer a part of this case, and Google denies them on that basis.

#### **COUNT IV**

##### **INVASION OF PRIVACY AGAINST DEFENDANT GOOGLE**

228. Google is without sufficient knowledge or information to form a belief as to the truth of the allegations of Paragraph 228, and on that basis denies them.

229. Google admits that Paragraph 229 quotes language from the relevant Google Terms of Service. Google denies the remaining allegations of Paragraph 229.

230. The allegations of Paragraph 230 are too vague to admit or deny, and Google denies them on that basis.

231. Google denies the allegations of Paragraph 231.

232. Google denies the allegations of Paragraph 232.

233. Google denies the allegations of Paragraph 233.

#### **COUNT V**

##### **INTRUSION UPON SECLUSION AGAINST DEFENDANT GOOGLE**

234. Google is without sufficient knowledge or information to form a belief as to the truth of the allegations of Paragraph 234, and on that basis denies them.

235. Google denies the allegations of Paragraph 235.

236. Google denies the allegations of Paragraph 236.

237. Google denies the allegations of Paragraph 237.

### **COUNT VI**

#### **VIOLATION OF THE CALIFORNIA BUSINESS AND PROFESSIONS CODE § 17200, *et seq.*, THE UNFAIR COMPETITION LAW (“UCL”) AGAINST DEFENDANT GOOGLE**

238. Paragraph 238 includes allegations regarding a claim that is no longer a part of this case, and Google denies them on that basis.

239. Paragraph 239 includes allegations regarding a claim that is no longer a part of this case, and Google denies them on that basis.

240. Paragraph 240 includes allegations regarding a claim that is no longer a part of this case, and Google denies them on that basis.

241. Paragraph 241 includes allegations regarding a claim that is no longer a part of this case, and Google denies them on that basis.

242. Paragraph 242 includes allegations regarding a claim that is no longer a part of this case, and Google denies them on that basis.

243. Paragraph 243 includes allegations regarding a claim that is no longer a part of this case, and Google denies them on that basis.

244. Paragraph 244 includes allegations regarding a claim that is no longer a part of this case, and Google denies them on that basis.

245. Paragraph 245 includes allegations regarding a claim that is no longer a part of this case, and Google denies them on that basis.

246. Paragraph 246 includes allegations regarding a claim that is no longer a part of this case, and Google denies them on that basis.

247. Paragraph 247 includes allegations regarding a claim that is no longer a part of this case, and Google denies them on that basis.

248. Paragraph 248 includes allegations regarding a claim that is no longer a part of this case, and Google denies them on that basis.

249. Paragraph 249 includes allegations regarding a claim that is no longer a part of this case, and Google denies them on that basis.

250. Paragraph 250 includes allegations regarding a claim that is no longer a part of this case, and Google denies them on that basis.

## **COUNT VII**

### **VIOLATIONS OF CALIFORNIA PENAL CODE § 502 THE CALIFORNIA COMPUTER CRIME LAW (“CCCL”) AGAINST DEFENDANT GOOGLE**

251. Paragraph 251 includes allegations regarding a claim that is no longer a part of this case, and Google denies them on that basis.

252. Paragraph 252 includes allegations regarding a claim that is no longer a part of this case, and Google denies them on that basis.

253. Paragraph 253 includes allegations regarding a claim that is no longer a part of this case, and Google denies them on that basis.

254. Paragraph 254 includes allegations regarding a claim that is no longer a part of this case, and Google denies them on that basis.

255. Paragraph 255 includes allegations regarding a claim that is no longer a part of this case, and Google denies them on that basis.

256. Paragraph 256 includes allegations regarding a claim that is no longer a part of this case, and Google denies them on that basis.

257. Paragraph 257 includes allegations regarding a claim that is no longer a part of this case, and Google denies them on that basis.

258. Paragraph 258 includes allegations regarding a claim that is no longer a part of this case, and Google denies them on that basis.

259. Paragraph 259 includes allegations regarding a claim that is no longer a part of this case, and Google denies them on that basis.



260. Paragraph 260 includes allegations regarding a claim that is no longer a part of this case, and Google denies them on that basis.

261. Paragraph 261 includes allegations regarding a claim that is no longer a part of this case, and Google denies them on that basis.

262. Paragraph 262 includes allegations regarding a claim that is no longer a part of this case, and Google denies them on that basis.

263. Paragraph 263 includes allegations regarding a claim that is no longer a part of this case, and Google denies them on that basis.

264. Paragraph 264 includes allegations regarding a claim that is no longer a part of this case, and Google denies them on that basis.

### **COUNT VIII**

#### **VIOLATIONS OF CALIFORNIA PENAL CODE § 630, *et seq.* THE INVASION OF PRIVACY ACT AGAINST DEFENDANT GOOGLE**

265. Paragraph 265 includes allegations regarding a claim that is no longer a part of this case, and Google denies them on that basis.

266. Paragraph 266 includes allegations regarding a claim that is no longer a part of this case, and Google denies them on that basis.

267. Paragraph 267 includes allegations regarding a claim that is no longer a part of this case, and Google denies them on that basis.

268. Paragraph 268 includes allegations regarding a claim that is no longer a part of this case, and Google denies them on that basis.

269. Paragraph 269 includes allegations regarding a claim that is no longer a part of this case, and Google denies them on that basis.

270. Paragraph 270 includes allegations regarding a claim that is no longer a part of this case, and Google denies them on that basis.

271. Paragraph 271 includes allegations regarding a claim that is no longer a part of this case, and Google denies them on that basis.

272. Paragraph 272 includes allegations regarding a claim that is no longer a part of this case, and Google denies them on that basis.

273. Paragraph 273 includes allegations regarding a claim that is no longer a part of this case, and Google denies them on that basis.

274. Paragraph 274 includes allegations regarding a claim that is no longer a part of this case, and Google denies them on that basis.

### **COUNT IX**

#### **VIOLATIONS OF CALIFORNIA CIVIL CODE § 1750 THE CONSUMER LEGAL REMEDIES ACT (“CLRA”) AGAINST DEFENDANT GOOGLE**

275. Paragraph 275 includes allegations regarding a claim that is no longer a part of this case, and Google denies them on that basis.

276. Paragraph 276 includes allegations regarding a claim that is no longer a part of this case, and Google denies them on that basis.

277. Paragraph 277 includes allegations regarding a claim that is no longer a part of this case, and Google denies them on that basis.

278. Paragraph 278 includes allegations regarding a claim that is no longer a part of this case, and Google denies them on that basis.

279. Paragraph 279 includes allegations regarding a claim that is no longer a part of this case, and Google denies them on that basis.

280. Paragraph 280 includes allegations regarding a claim that is no longer a part of this case, and Google denies them on that basis.

281. Paragraph 281 includes allegations regarding a claim that is no longer a part of this case, and Google denies them on that basis.

282. Paragraph 282 includes allegations regarding a claim that is no longer a part of this case, and Google denies them on that basis.

283. Paragraph 283 includes allegations regarding a claim that is no longer a part of this case, and Google denies them on that basis.

### **PRAYER FOR RELIEF**

With respect to Plaintiffs' prayers for relief (articulated in A–H), Google denies all of Plaintiffs' claims for relief.

### **AFFIRMATIVE AND OTHER DEFENSES**

Pursuant to Rule 8(c) of the Federal Rules of Civil procedure, Google sets forth the following affirmative and other defenses, and does so on information and belief as to the actions of others. Google does not concede that it bears the burden of proof or persuasion on any of these defenses. Google reserves the right to assert additional defenses in the event that discovery or further investigation demonstrates that any such defense is appropriate or applicable.

#### **FIRST DEFENSE**

(Failure to State a Claim)

The Complaint fails to state a claim upon which relief may be granted because it fails to allege, among other required facts, facts showing that:

- (a) Plaintiffs had an actual, subjective belief that Google would not correlate information included in the GET requests transmitted by Plaintiffs' browsers directly to Google when visiting websites that partnered with Google to display Google ads;
- (b) Plaintiffs had an objectively reasonable belief that Google was not going to correlate information included in the GET requests transmitted by Plaintiffs' browsers directly to Google when visiting websites that partnered with Google to display Google ads;
- (c) the nature, scope, and actual or potential impact of the correlation of information included in GET requests transmitted by Plaintiffs' browsers to Google when visiting websites that partnered with Google to display Google ads was an egregious breach of social norms that was highly offensive to a reasonable person;
- (d) Plaintiffs were using the specific versions of the operating systems and Safari browser that would allow the “\_drt\_” cookie to be placed using the alleged Post method;
- (e) Google had not already placed any cookies from the doubleclick.net domain on Plaintiffs' browsers in a context not alleged to be an invasion of privacy, such as a first-

party context, or prior to Google's use of the alleged Post method to place the "\_drt\_" cookie;

(f) Google intentionally placed the DoubleClick ID Cookie and did so with knowledge that doing so conflicted with any alleged representation made to Plaintiffs;

(g) Google's actions were not accidental, misguided, or excusable;

(h) Plaintiffs have suffered any cognizable damages as a result of the alleged actions or are otherwise entitled to relief.

## **SECOND DEFENSE**

(Accidental, Misguided, or Excusable Acts)

Google has no liability to Plaintiffs because to the extent any of the alleged actions by Google are true, those actions were accidental, misguided, or excusable in that Google did deliberately place the DoubleClick ID Cookie on Safari browsers in a third-party context if the browser was set to block third-party cookies.

## **THIRD DEFENSE**

(Intervening Actor)

Google has no liability to Plaintiffs because the alleged harm was the proximate result of actions by third parties.

## **FOURTH DEFENSE**

(Consent)

Google has no liability to Plaintiffs because Plaintiffs consented to transmit to Google the information included in the GET requests transmitted by Plaintiffs' browsers directly to Google when they loaded websites that partnered with Google to display Google ads and/or by virtue of the fact that Plaintiffs had used Google services and agreed to this practice in their agreements with Google.

### **FIFTH DEFENSE**

(Lack of Seclusion)

Google has no liability to Plaintiffs for correlating information included in the GET requests transmitted by Plaintiffs' browsers directly to Google because, by virtue of the design of Plaintiffs' browsers and the operation of the Internet, Plaintiffs' decision to visit a website caused Plaintiffs' browsers to transmit a GET request containing the information at issue to any and all persons or entities that may have partnered with the website being loaded, regardless of the number, identity, nature, or intent of these persons or entities.

### **SIXTH DEFENSE**

(Waiver, Estoppel, and Other Equitable Defenses)

Google has no liability to Plaintiffs in equity because Plaintiffs' actions in visiting websites that partnered with Google to display ads and in using browsers that had been programmed to allow Google to place cookies under the circumstances in which Google placed cookies operate as a waiver and estoppel of any right of Plaintiffs to complain of Google's conduct.

### **SEVENTH DEFENSE**

(De Minimis Injury)

Google has no liability to Plaintiffs because Plaintiffs have not been injured in any non-de minimis manner, if at all. The only effect of the alleged conduct, if any, is that Plaintiffs, while browsing websites that partnered with Google to display Google ads, would have seen some ads that were designed to be more interesting to Plaintiffs.

### **EIGHTH DEFENSE**

(Failure to Mitigate)

Plaintiffs have failed to mitigate damages because they chose not to use their browsers in a setting that blocked all third party cookies even though such a setting was available to them.

### **NINTH DEFENSE**

(Unjust Enrichment)

Plaintiffs' claims are barred to the extent Plaintiffs or members of the putative class would be unjustly enriched if allowed to recover any monies claimed to be due in the Complaint.

### **TENTH DEFENSE**

(Improper Class Action)

Google alleges that this lawsuit cannot proceed as a class action for several reasons:

- (a) the alleged definition of the putative class would create a class that is unascertainable because neither Plaintiffs, nor Google, nor any third party can determine whether any person "visited a website from which doubleclick.net (Google's advertising serving service) ... cookies were deployed as part of a scheme to circumvent the users' browsers' settings to block such cookies and which were thereby used to enable tracking of the class members Internet communications without consent." It would be impractical, if not impossible to attempt to determine whether any particular person's browser received a DoubleClick ID Cookie in the manner complained of rather than some other manner not complained of by Plaintiffs;
- (b) Plaintiffs' claims are not typical of the claims of the alleged putative class because most class members (and probably Plaintiffs) did not receive a DoubleClick ID Cookie in the manner complained of by Plaintiffs but rather in some other manner not complained of by Plaintiffs, and also because many if not most class members consented to the placement of cookies and/or would not object to their placement by Google;
- (c) Plaintiffs do not or cannot fairly and adequately represent any class because they cannot know how the putative class members feel about Google's conduct and whether they consented to it or objected to it;
- (d) individual questions will predominate over all common questions in this action, including questions of how Plaintiffs and the alleged putative class members received a DoubleClick ID Cookie, the status and settings of their devices and browsers used to

browse the Internet, whether they had an actual expectation of privacy in browsing information voluntarily sent to Google, and the extent of any injury flowing from any alleged invasion of privacy; and

(e) Google may have additional defenses to class certification and reserves its right to assert those defenses in a timely fashion.

**PRAYER FOR RELIEF**

WHEREFORE, Google requests:

- (a) That Plaintiffs take nothing by way of their Complaint;
- (b) That no class be certified in this action;
- (c) That judgment be entered in favor of Google and against Plaintiffs, and that Plaintiffs' action be dismissed in its entirety with prejudice;
- (d) That Google be awarded its costs of suit and reasonable attorneys' fees; and
- (e) For other such relief as the Court shall deem just and proper.

**JURY TRIAL DEMANDED**

Google demands a trial by jury of all issues so triable pursuant to Federal Rule of Civil Procedure 38.

Dated: March 2, 2016

Respectfully submitted,

WILSON SONSINI GOODRICH & ROSATI  
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By: /s/ Michael H. Rubin

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